

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DALE A. MAC EWEN,

Plaintiff,

vs.

MICHAEL J. ASTRUE, Commissioner of
Social Security,

Defendant.

CASE NO. 10CV1263 JLS (MDD)

**ORDER (1) ADOPTING REPORT
AND RECOMMENDATION;
(2) DENYING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT; AND (3) DENYING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

(ECF Nos. 12, 18, 24)

Presently before the Court are Plaintiff's motion for summary judgment, (ECF No. 12), Defendant's motion for summary judgment, (ECF No. 18), and Magistrate Mitchell D. Dembin's report and recommendation ("R&R") recommending that the Court deny both Plaintiff's and Defendant's motions, (ECF No. 24).¹

Federal Rule of Civil Procedure 72(b) and 28 U.S.C. § 636(b)(1) set forth a district court's duties in connection with a magistrate judge's R&R. The district court must "make a de novo determination of those portions of the report to which objection is made," and "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge."

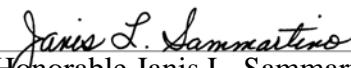
¹ The Court notes that the caption of the R&R erroneously states that Defendant's motion for summary judgment should be granted, when in fact the recommendation is that it be denied. (R&R 1, ECF No. 24)

1 28 U.S.C. § 636(b)(1); *see also United States v. Raddatz*, 447 U.S. 667, 673–76 (1980); *United*
2 *States v. Remsing*, 874 F.2d 614, 617 (9th Cir. 1989). However, in the absence of timely
3 objection, the Court “need only satisfy itself that there is no clear error on the face of the record in
4 order to accept the recommendation.” Fed. R. Civ. P. 72 advisory committee’s note (citing
5 *Campbell v. U.S. Dist. Court*, 501 F.2d 196, 206 (9th Cir. 1974)).

6 Here, neither party has filed objections to Magistrate Judge Dembin’s R&R. Having
7 reviewed the R&R, the Court finds that it is thorough, well reasoned, and contains no clear error.
8 Accordingly, the Court hereby (1) **ADOPTS** Magistrate Judge Dembin’s R&R, (2) **DENIES**
9 Plaintiff’s motion for summary judgment, and (3) **DENIES** Defendant’s motion for summary
10 judgment. The case is hereby **REMANDED** to the Administrative Law Judge for further
11 proceedings consistent with this ruling.

12 **IT IS SO ORDERED.**

13 DATED: November 2, 2011

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Honorable Janis L. Sammartino
15 United States District Judge

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